In the Supreme Court of the United States

OCTOBER TERM, 1969

No. 1076

SHIRLEY I. MCBRIDE, ADMINISTRATOR, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FIRST DISTRICT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the Circuit Court of Cook County is not officially reported. The opinion of the Appellate Court of Illinois, First District (Pet. App. 1–6), is reported at 110 Ill. App. 2d 200. The order of the Supreme Court of Illinois denying review is unreported.

JURISDICTION

The order of the Supreme Court of Illinois denying the petition for appeal or for leave to appeal was entered on October 21, 1969. The petition for a writ of certiorari was filed on January 14, 1970. The

jurisdiction of this Court is invoked under 28 U.S.C. 1257(3).

QUESTION PRESENTED

Whether a supplemental claim for federal taxes filed by the United States in a State court probate proceeding after the expiration of the State period for filing against decedents' estates is entitled to payment on a priority basis from the estate's entire assets.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The pertinent constitutional and statutory provisions are set forth in the petition (pp. 3–4).

STATEMENT

Ernest J. McBride died in September 1963, and his widow was appointed administratrix of his estate. She filed an original inventory, in January 1964, listing assets of the estate in the amount of $3,600. In 1964 the Internal Revenue Service filed a claim for $19,426.18 of income and F.I.C.A. taxes owed by the decedent for the year 1963. This claim was eventually allowed in the amount of $5,545.20 (Pet. App. 1).

In the interim, in January 1965, the administratrix filed a supplemental inventory listing $5,278.46 of additional assets plus others of unknown but presumed minor value. She thereafter filed a second supplemental inventory, in December 1965, listing $20,883.08 of additional assets (Pet. App. 1–2).

The Illinois probate court designated the first Monday in February 1966, as the last day for filing claims against the estate. Subsequently, the United States re-

quested leave, in April 1967, to file a supplemental claim for unpaid federal income taxes, interest and penalties due from the decedent for the years 1956 through 1962 in the aggregate amount of $553,516.51. Over objection by several creditors, the court granted leave to the United States to file its supplemental claim and allowed it as a third priority claim against the estate in the amount of $545,085.83. (Pet. App. 2). Upon appeal by the administratrix, the Appellate Court of Illinois, First District, affirmed (Pet. App. 2–6), and the Supreme Court of Illinois denied her application for review.

ARGUMENT

The decision below is correct; there is no conflict of decisions, and no other occasion for further review by this Court.

1. 31 U.S.C. 191 (Rev. Stat. § 3466) provides in part:

> Whenever * * * the estate of any deceased debtor, in the hands of the executors or administrators, is insufficient to pay all the debts due from the deceased, the debts due to the United States shall be first satisfied * * *.

Petitioner does not contest the fact that the decedent's estate was insolvent and that 31 U.S.C. 191 governs the distribution of an estate's assets to the United States. Section 204 of Chapter 3 of the Illinois Revised Statutes provides for the filing of inventories of an estate's assets and the subsequent designation of a terminal date for filing claims. It further states that "all

claims not filed on or before the designated date are forever barred as to the estate listed in such inventory." Petitioner contends that the courts below erred in allowing the supplemental claim of the United States filed after the period for filing claims against the entire estate had ended, and in not confining its allowance only against assets subsequently inventoried.

As the Illinois appellate court properly held (Pet. App. 3–4), the decision in *United States* v. *Summerlin*, 310 U.S. 414, is squarely contrary to petitioner's argument. In that case the United States asserted a claim against an estate under a Florida statute which provided that any claim not filed within eight months of publication was void. In reversing the judgments of the State courts disallowing the claim because of late filing under the Florida statute, this Court stated (310 U.S. at 416):

> It is well settled that the United States is not bound by state statutes of limitation or subject to the defense of laches in enforcing its rights. *United States* v. *Thompson*, 98 U.S. 486; *United States* v. *Nashville, C. & St. L. Ry. Co.*, 118 U.S. 120, 125, 126; *Stanley* v. *Schwalby*, 147 U.S. 508, 514, 515; *Guaranty Trust Co.* v. *United States*, 304 U.S. 126, 132; *Board of Commissioners* v. *United States*, 308 U.S. 343, 351. The same rule applies whether the United States brings its suit in its own courts or in a state court. *Davis* v. *Corona Coal Co.*, 265 U.S. 219, 222, 223.

See also *Harrison* v. *Deutsch*, 294 Ill. App. 8.[1]

There is no merit to petitioner's contention (Pet. 9–10) that *Summerlin* applies only if the State statute totally voids an untimely filed claim, but that it is inapplicable where the claim may be asserted against subsequently discovered assets or against the fiduciary personally. The pertinent decisions do not impose such a limitation. See, *e.g.*, *United States* v. *John Hancock Mutual Ins. Co.*, 364 U.S. 301, 308; *United States* v. *Gera*, 409 F. 2d 117, 120 (C.A. 3); *United States* v. *Fort Benning Rifle & Pistol Club*, 387 F. 2d 884, 887 (C.A. 5); *United States* v. *West Texas State Bank*, 357 F. 2d 198, 201 (C.A. 5). Nor is *Summerlin* distinguishable in any of the other respects suggested by petitioner.

Moreover, as the court below properly held (Pet. App. 5–6), petitioner's contention is contrary to 31 U.S.C. 192 (Rev. Stat. § 3467), which provides, in part, as follows:

> Every executor, administrator * * * who pays, in whole or in part, any debt due by the * * * estate * * * for which he acts before he satisfies and pays the debts due to the United States from such person or estate, shall become answerable in his own person and estate to the

[1] Petitioner's reliance (Pet. 10) upon *In re Estate of Bird*, 410 Ill. 390, is misplaced. That case held that the State of Illinois cannot claim against previously inventoried assets unless its claim was timely filed. The Illinois Supreme Court distinguished *Harrison* v. *Deutsch*, *supra*, on the ground that that case was predicated upon a federal priority statute which, of course, is the situation here.

> extent of such payments for the debts so due to the United States, or for so much thereof as may remain due and unpaid.

Since an administratrix is personally liable if she distributes the assets of an estate before paying federal taxes of which she has knowledge (*King* v. *United States,* 379 U.S. 329), it follows that Congress intended that federal taxes were to be collected regardless of State-imposed limitations upon collection.

2. Petitioner's other contention—that permitting a federal claim for unpaid taxes against a decedent's estate filed after the expiration of a State-imposed terminal date on claims is contrary to the Tenth Amendment—is also without merit. The decision below does not abrogate a State's authority to provide for the administration of decedent's estates. See *Ex parte Worcester National Bank,* 279 U.S. 347, 359. As the court below correctly indicated (Pet. App. 3), Congress has the power under Article I, Section 8 of the Constitution to lay and collect taxes, and such power is not limited by the Tenth Amendment. The guiding principle was stated succinctly by this Court in *United States* v. *Summerlin, supra* (310 U.S. at 417):

> When the United States becomes entitled to a claim, acting in its governmental capacity, and asserts its claim in that right, it cannot be deemed to have abdicated its governmental authority so as to become subject to a state statute putting a time limit upon enforcement.

CONCLUSION

For the reasons stated, the petition for a writ of certiorari should be denied.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

JOHNNIE M. WALTERS,
Assistant Attorney General.

CROMBIE J. D. GARRETT,
KARL SCHMEIDLER,
Attorneys.

MARCH 1970.

U.S. GOVERNMENT PRINTING OFFICE: 1970